

## Message Text

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15

ACTION EUR-25

INFO OCT-01 EA-11 NEA-10 IO-15 ISO-00 AID-20 CEA-02

CIAE-00 COME-00 EB-11 FRB-02 INR-10 NSAE-00 RSC-01

OPIC-12 SPC-03 TRSE-00 CIEP-02 LAB-06 SIL-01 OMB-01

DODE-00 FMC-04 CG-00 COA-02 DLOS-06 AF-10 ARA-16

PA-03 USIA-15 PRS-01 DOTE-00 SS-15 NSC-10 STR-08

DRC-01 L-03 OIC-04 /231 W  
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R 111103Z OCT 73

FM USMISSION OECD PARIS

TO SECSTATE WASHDC 816

INFO AMEMBASSY ATHENS

AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY CANBERRA

AMEMBASSY COPENHAGEN

AMEMBASSY THE HAGUE

AMEMBASSY HELSINKI

AMEMBASSY LONDON

AMEMBASSY MADRID

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

AMEMBASSY WELLINGTON

AMCONSUL HAMBURG

USMISSION GENEVA

LIMITED OFFICIAL USE OECD PARIS 26496

E.O. 11652: N/A

TAGS: ETRN, OECD, UNCTAD

SUBJECT: SHIPPING: OECD MARITIME TRANSPORT COMMITTEE SPECIAL

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GROUP ON UNCTAD, OCTOBER 2-6; CODE OF CONDUCT ON LINER

CONFERENCES

REF: USOECD 26362

1. SUMMARY. SPECIAL GROUP ON UNCTAD CONSIDERED IMPLEMENTATION ISSUES BOTH IN ITS OCTOBER 2-6 PLENARY AND AT ONE-AND-HALF DAY CONCURRENT MEETING OF LEGAL SUB-GROUP. LATTER PRODUCED SHORT CONCLUSIONS PAPER WHICH SUMMARIZED VIEWS EXPRESSED. ALTHOUGH THERE SOME PERCEPTIBLE DRAWING TOGETHER OF GROUP B POSITIONS ON IMPLEMENTATION, THIS STILL FAR SHORT OF UNITED GROUP B POSITION FOR CONFERENCE BEGINNING NOVEMBER 12. END SUMMARY.

2. GENERAL VIEWS. POSITION OF DELEGATIONS IN GROUP B REMAIN ESSENTIALLY UNCHANGED FROM JUNE PREPCOM MEETING, EXCEPT THAT DELS HAVE INDICATED GREATER FLEXIBILITY WITH RESPECT TO SOLUTIONS THAN HAS APPEARED PREVIOUSLY. IN PARTICULAR, NETHERLANDS HAS INDICATED IT MAY BE ABLE TO ACCEPT MANDATORY ARBITRATION UNDER CERTAIN CIRCUMSTANCES (TO BE CLARIFIED WHEN CONFERENCE BEGINS), LEAVING UK ISOLATED IN POSITION THAT COMMERCIAL INTERESTS, ALONE, SHOULD, IN THE FINAL INSTANCE, DETERMINE HOW DISPUTES ARE TO BE SETTLED. ALSO, SCANDINAVIANS AND AUSTRALIA HAVE INDICATED WILLINGNESS TO ACCEPT PROVISION IN CODE RECOGNIZING ROLE OF NATIONAL LAW AND REGULATIONS IN DISPUTE RESOLUTION. GROUPING OF POSITIONS IS AS FOLLOWS: WILL NOT ACCEPT MANDATORY ARBITRATION, SUPPORTING RESORT TO NATIONAL MEANS: FRG, US, JAPAN, PROBABLY CANADA; WANT MANDATORY ARBITRATION FOR CERTAIN LIMITED KINDS OF CASES (MEMBERSHIP AND "PARTICIPATION IN TRADE" ISSUES IN PARTICULAR): AUSTRALIA, FRANCE, SPAIN, GREECE, PERHAPS NETHERLANDS; CAN ACCEPT MANDATORY ARBITRATION GENERALLY: SCANDINAVIANS; BY COMMERCIAL INTEREST DECISION ALONE: UK.

3. MANDATORY CONCILIATION HYPOTHESIS. US RAISED FOR DISCUSSION PURPOSES INDICATING IT WAS NOT RPT NOT A US POSITION BUT SURFACED ONLY TO ACCESS REACTIONS POSSIBLE COMPROMISE POSITION WITH GROUP OF 77, INDICATING LIMITED OFFICIAL USE

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IT HAD BEEN DISCUSSED INFORMALLY WITH SOME GROUP 77 REPS: (1) MANDATORY CONCILIATION, NON-BINDING DECISION, COUPLED WITH VOLUNTARY ARBITRATION. THIS WOULD REQUIRE MORE DETAILED CODE PROVISIONS TO ASSURE EFFICIENT PROCEDURES, AND PERHAPS MORE FORMALIZED PROCEDURES, ALONG THE LINES OF ARBITRATION; (2) ACKNOWLEDGEMENT IN CODE OF RESORT TO APPLICABLE NATIONAL LAW IN EVENT PROCEDURES IN (1) DID NOT LEAD TO RESOLUTION OF DISPUTE; (3) A REVIEW

CONFERENCE AFTER FIVE YEARS TO EXAMINE IMPLEMENTATION, WITH FACILITATED AMENDMENT PROCEDURES FOR DECISION BY CONFERENCE RELATING TO IMPLEMENTATION. A REPORTING REQUIREMENT COULD BE INCLUDED ON IMPLEMENTATION CASES TO EXPEDITE WORK OF REVIEW CONFERENCE. REACTION: UK UPSET BY RECOGNITION OF ROLE OF NATIONAL LAW AND REGULATIONS; AUSTRALIA THOUGHT IT UNSATISFACTORY BECAUSE IT PROMOTED CONFLICT OF NATIONAL JURISDICTION AND GAVE NO ANSWER WHEN THIS OCCURRED, AND ADDED A POTENTIALLY USELESS PROCEDURAL STEP SINCE CONCILIATION DECISION WAS NOT BINDING; OTHERWISE, COUNTRIES SAID THEY NEEDED TIME TO STUDY OR, IN CASE OF SCANDINAVIANS, RECEIVED IT FAVORABLY. SCANDINAVIANS SUGGESTED POSSIBLY FLOATING IT AT MID-POINT OF CONFERENCE ONCE IMPASSE HAD BEEN REACHED. US HAD INDICATED IT WILL CONTINUE TO SOUND OUT GROUP 77, MEMBERS, QUESTIONING WHETHER TIME WOULD PERMIT WAITING UNTIL MID-POINT IF CONFERENCE TO WORK OUT IMPLEMENTATION COMPROMISE, GIVEN PRIMITIVE STAGE OF WORK ON THIS SUBJECT TO DATE.

4. MANY OF ABOVE VIEWS WERE INCORPORATED INTO SHORT "CONCLUSIONS" PAPER PREPARED BY LEGAL SUB-GROUP OF SPECIAL GROUP, WHICH MET FOR DAY AND HALF. IN ADDITION TO ABOVE SUBJECTS, SUB-GROUP ALSO EXAMINED (AND REJECTED) POLISH PROPOSAL TABLED AT JUNE PREPCOM AND UNCTAD SECRETARIAT DRAFT FINAL CLAUSES REGARDING OBLIGATIONS OF GOVERNMENT UNDER A CONVENTION, AS WELL AS CENSA/ESC RECOMMENDATION ON DISPUTE RESOLUTION. RE LATTER GROUP GENERALLY CONSIDERED THAT ITS "MORALLY BINDING" FORM OF ENFORCEMENT NOT APPROPRIATE FOR WORLD CODE. US DEL HAND-CARRYING TEXT OF CONCLUSIONS PAPER. BROWN

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 11 OCT 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** golinofr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1973OECDP26496  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** n/a  
**From:** OECD PARIS  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1973/newtext/t19731038/aaaabbzy.tel  
**Line Count:** 146  
**Locator:** TEXT ON-LINE  
**Office:** ACTION EUR  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:**  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** USOECD 26362  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** golinofr  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 23 AUG 2001  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <23-Aug-2001 by thigpegh>; APPROVED <14-Nov-2001 by golinofr>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** SHIPPING: OECD MARITIME TRANSPORT COMMITTEE SPECIAL LIMITED OFFICIAL USE  
**TAGS:** ETRN, OECD, UNCTAD  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005